

United States General Accounting Office
Washington, D. C. 20548

FOR RELEASE ON DELIVERY
Expected at 10:00 a.m. EST
Wednesday, March 10, 1971

STATEMENT OF
PAUL G. DEMBLING
GENERAL COUNSEL
BEFORE THE
SUBCOMMITTEE ON PUBLIC HEALTH AND WELFARE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
ON
THE PROPOSED CLOSINGS OF PUBLIC
HEALTH SERVICE HOSPITALS BY THE DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE (H. CON. RES. 98)

Mr. Chairman and Members of the Subcommittee:

We appreciate this opportunity to appear before your subcommittee to present our views on H. Con. Res. 98 and similar resolutions on the proposed closings of the Public Health Service Hospitals by the Department of Health, Education, and Welfare. The purpose of these resolutions is to express the sense of the Congress that the existing facilities be maintained for the present and be considered as an integral part of the nation's health delivery system.

As you know, the proposed closings have been the subject of two legal opinions rendered by the Comptroller General; one in June, 1965 and the most recent one of February 23, of this year. Last month's opinion was rendered to the Chairman of the House Committee on Merchant Marine and Fisheries, in response to his request for our current views on this

710131
094437

matter. I have copies of this opinion, if you wish to have it inserted in the record.

As was made clear in those opinions, we would view action by the Department of Health, Education, and Welfare to close down the entire Public Health Service hospital system as an unwarranted extension of the legal authority contained in the Public Health Service Act of 1944 under which the Secretary operates and manages these facilities. In our view such action by the Secretary would run contrary to the intent of the Congress as manifested in the 1944 act. As we indicated in our February 23rd letter, that Act codified then existing Public Health Service laws which trace their origin back to 1798, at which time authority was given to the President to construct the first Marine hospital.

There are numerous indications in the 1944 Public Health Service Act that the Congress intended the Public Health Service to continue to operate and maintain its own medical facilities. The act is replete with references to the "institutions, hospitals, and stations of the Service." Section 321 provides authority to the Secretary to operate and maintain Public Health Service hospitals. Section 322 sets forth the obligation of the Secretary to care for seamen and other listed beneficiaries at Service institutions, hospitals, and stations; section 301 provides authority to admit and treat at "hospitals and stations of the Service" persons not otherwise eligible, for purposes of study; Section 324 confers authority on the Secretary to provide medical,

surgical, and hospital services and supplies to Bureau of Employee Compensation beneficiaries, another authority that can only be exercised at institutions, hospitals, and stations of the Service; section 326 entitles certain Coast Guard personnel and public health service officers to medical and surgical treatment and hospitalization by the Service; provision is also made for treatment of narcotic addicts and persons afflicted with leprosy at specially equipped Service hospitals (sections 331, 341, and 344); and section 328 provides for the sharing of facilities and resources by the Public Health Service hospitals and other community health care facilities. It seems clear that these provisions would be inoperable and meaningless in the absence of institutions, hospitals, and stations of the Service, and that there is no reasonable way to read these provisions except as imposing an obligation on the Secretary to establish and maintain such facilities for the care of those who are by the statute entitled to it.

Moreover, as pointed out in our February 23 opinion, this interpretation of the 1944 Public Health Service Act is the only one in accord with the long history of the predecessor of the Public Health Service, the Marine Hospital Service, which was established by the act of July 16, 1798. This act conferred authority on the President to construct hospitals specifically for seamen. The legislative history of that act clearly indicates that the construction of a marine hospital system was contemplated. As we stated in our letter of February 23, 1971, the obligation to provide medical care and the concomitant obligation to

maintain a hospital system to provide such care have been characteristic of the Public Health Service ever since the passage of the 1798 act. In enacting the 1944 Public Health Service Act, it seems clear that the Congress assumed the continued maintenance of the existing system as a necessary condition to the effective implementation of the act's essential provisions, as I have just outlined.

It should also be noted that in a legal opinion by the Assistant General Counsel of the Department of HEW dated December 17, 1963, he stated:

"We would thus conclude that there is no question but that the Public Health Service Act represents the congressional intent that a hospital system be operated and maintained by the Service to carry out the obligations imposed by or implicit in the several statutory provisions noted."

With respect to the authority of the Veterans Administration to provide care for beneficiaries of the Public Health Service, we pointed out in our February 23rd letter that we see no legal objection to periodic arrangements for cross-servicing of VA and Public Health Service beneficiaries. Since merchant seamen are not beneficiaries of the VA, the admission of merchant seamen to VA hospitals would involve interagency services under section 601 of the Economy Act of 1932, 31 U.S.C. 686, which authorizes Federal departments and agencies to place orders for goods and services with other Federal agencies on a reimbursable basis. Section 601 also requires that the requisitioned Federal agency be in a position to provide the services requested, which has been construed by

the Comptroller General to mean that the rendering agency can do so without necessitating construction or other capital expenditure which would be unnecessary if the requested services were not to be provided. In view of this and the fact that under 38 U.S.C. 611 the Administrator of the VA may furnish hospital care to non-VA beneficiaries as a humanitarian service in emergency cases, it is generally recognized that Public Health Service beneficiaries may under such circumstances be admitted to VA Hospitals on a space available basis. However, providing such services under the Economy Act is at best a secondary or incidental function of the agency rendering the service and section 601 certainly was not intended to be a basis for transferring a primary administrative function from one agency to another. Accordingly, the VA could not assume overall responsibility for Public Health Service beneficiaries under such authority.

Whether the Public Health Service should be authorized to close the marine hospitals is a matter of policy for the Congress to determine and one on which we would make no recommendation. We agree, however, that the Resolutions under consideration by your Committee, which express the sense of Congress that the present Public Health Service Hospital System be maintained and considered as an integral, though small, part of the nation's medical care facilities are consistent with present law and with the long history of the Public Health Service Hospital System in this nation.